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### REMARKS

Applicants appreciate the time taken by the Examiner to carefully review Applicants' application. At the time of the Office Action mailed April 20, 2006, Claims 1-11, 14, 25, 27, 37 and 83-88 were pending in this Application. Claims 1-6, 8-11, 14, 25, 27, 37 and 83-88 were rejected. Claim 7 was objected to as being dependent from upon a rejected base claim but allowable if rewritten in independent form. Claims 1, 7 and 10 have been amended and Claim 89 has been added to further define various features of Applicant's invention. Applicants respectfully request reconsideration and favorable action in this case.

#### Allowable Subject Matter

Claim 7 was objected to as being dependent upon a rejected base Claim but would be allowable if rewritten. Applicants submit that Claim 7 has been rewritten in Independent form, including all the limitations of the base claim and intervening claims.

#### New Claim

New Claim 89 has been added to further define various aspects of Applicants' invention.

#### Rejections under 35 U.S.C. §103

*Claims 1, 2, 3, 6, 8, 27, 83, 84, 85, 87 and 88*

Claims 1, 2, 3, 6, 8, 27, 83, 84, 85, 87 and 88 were under 35 U.S.C. 103 as being obvious over U.S. Patent 5,047,027 granted to Rydell ("Rydell") in view of U.S. Patent 6,013,076 granted to Goble et al. ("Goble '076).

Independent Claim 1, as amended, recites a return electrode formed into a coil "having a plurality of turns ... wherein a gap exists between a plurality of the turns of the return electrode coil" and "an electrically conductive fluid delivery element adapted to deliver an electrically conductive fluid in the vicinity of ... the gap between turns of the return electrode coil."

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Rydell discloses an electrosurgical probe with a return coil (see Figs 1, 2 and 4), however the return coil does not disclose, teach or suggest a return coil having a gap between the turn of the coil. Rydell also does not disclose teach or suggest a fluid delivery element configured to direct conductive fluid between the gap between turns of the return coil.

Goble '076 discloses an electrosurgical instrument that includes a supply channel and return channel for delivering saline between electrodes. See Col. 9, line 63- Col. 10, line 14. However, Goble '076 does not disclose, teach or suggest a helical return electrode coil or a delivery element configured to direct conductive fluid between the gap between turns of the return electrode coil.

Because Rydell and Goble '076 considered alone or in combination fail to disclose, teach or suggest each and every limitation, they cannot render obvious Claim 1 or Claims 2, 3 6, 8, 27, 83, 84, 85, 87 and 88 which depend therefrom. Applicants request reconsideration, withdrawal of the rejections under §103 and full allowance of Claims 1, 2, 3 6, 8, 27, 83, 84, 85, 87 and 88.

*Claims 4, 5, 9, 10, 11, 14, 25, 27 and 86*

Claims 4, 5, 9, 10, 11, 14, 25, 27 and 86 were rejected as obvious under 35 U.S.C. §103 in view of Rydell and Goble '076 in view of U.S. Patent no. 5,891,134 granted to Goble: ("Goble '134") and U.S. Patent no. 6,280,441 ("Ryan").

Goble '134 is cited for teaching the use of a ceramic insulating spacer. Goble '134 does not disclose, teach or suggest a helical return electrode coil or a delivery system configured to direct conductive fluid between the gap between turns of the return electrode coil.

Ryan discloses an electrosurgical apparatus that includes an effector (an active electrode) with a helical configuration for insertion into target tissue. See Col. 2, lines 44-46. Ryan discloses bi-polar embodiments in which both electrodes are disposed on the helical effector (See Figure 5) and wherein two intertwined helical electrodes are presented (See Figure 6). Ryan contemplates the provision of coolant flow within the effector, however, the coolant fluid is also returned via the effector and fluid is not

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introduced into the target tissue. See Figs 9, 10 and 11 and Col. 6, lines 27-31 and Col. 7, lines 42-48. The office action suggests that the spacing of the coils of the effector of Ryan is capable of retaining liquid against coil surfaces and that it would be obvious to combine Ryan with Rydell and Goble '076 "to obtain spaced coils that can be easily attached to tissue." Applicants traverse.

The Claims presently recite a fluid delivery element "adapted to deliver an electrically conductive fluid in the vicinity of said active electrode and the gap between turns of the return electrode coil." Applicants submit that spacing of the helix of Ryan is intended to aid in insertion of the helix into tissue. Further, after being inserted, the ability of any fluid delivery system to direct conductive fluid to the helix would be limited or non-existent due to the presence of tissue between the coils. Additionally, Ryan's discussion of the contained cooling system inherently teaches away from the introduction of any fluid within the target tissue. Clearly, Ryan contemplated a fluid system within the apparatus but did not present any embodiment in which fluid was introduced into the target tissue. Finally, the only embodiment in which Ryan contemplates a return electrode in the form of a coil—Figure 6, a mating coil is provided as the active electrode. As such the introduction of the teachings of Ryan as suggested in the office action would require the introduction of such a helical active electrode.

Accordingly, Applicants submit that the suggested combination of Ryan with Goble '076 and Rydell is improper and that the combination of Ryan, Goble '076, Goble '134 and Ryan do not render obvious presently amended Independent Claim 1 and Claims 4, 5, 9, 10, 11, 14, 25, 27 and 86 that depend therefrom. For at least these reasons Applicants request reconsideration, withdrawal of the rejection under §103 and full allowance of Claims 4, 5, 9, 10, 11, 14, 25, 27 and 86.

*Claim 37*

Claim 37 was rejected as obvious under 35 U.S.C. §103 in view of Rydell and Goble '076 in view of U.S. Patent no. 4,832,048. For the reasons listed above,

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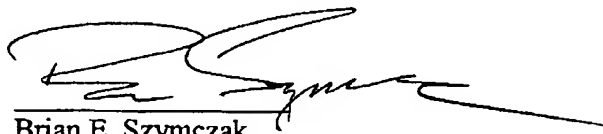
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Applicants submit that Claim 37 is now allowable. Applicants request reconsideration and favorable action.

### CONCLUSION

Applicant has made a sincere effort to address all issues raised in the Office Action. If the Examiner believes a telephone conference would expedite prosecution of this application, a telephone call to the undersigned attorney at the number listed below will be appreciated.

Respectfully submitted,



Brian E. Szymczak  
Reg. No. 47,120

ArthroCare Corporation  
680 Vaqueros Avenue  
Sunnyvale, California 94085-3523  
(512) 391-3961

Date: 8/21/2006

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